

II. RESPONSE TO OFFICE ACTION

I. Claims in the Case

Claims 1, 15-33 and 43 have been canceled (claim 43 is duplicative of claim 14). Claim 38 has been placed into independent format, and the dependencies of remaining claims have been amended as appropriate. No claims have been added. Claims 2-14 and 34-42 are pending, with claims 4-7 withdrawn.

II. Rejections Under 35 U.S.C. §112, First Paragraph

The Action first rejects all of the pending claims under 35 U.S.C. §112, first paragraph, taking the position that the specification is inadequately enabled as to the scope of the claims. The Action takes the position that the claims are enabled only for cancers expressing the growth factor and treatments directed to the growth factor.

It is noted that claim 38 has been placed into independent format, and claim 1 canceled. Amended claim 38 is now believed to include the elements requested by the Examiner, and is now directed to obtaining a non-tumor skin, mucosal or hair follicle tissue sample by non-invasive procedures from a patient undergoing the cancer treatment with a chemotherapeutic agent, wherein i) said cancer is growth factor related and expresses a growth factor receptor, ii) said cancer treatment is directed to said growth factor receptor. It is believed that this amendment comports with the Examiner's comments in the subject Action. (Although the Examiner's proposal did not mention mucosal, it is believed that the inclusion of the term "mucosal" is consistent with the Examiner's recommendation.)

Secondly, the Action rejects all the claims, again under 35 U.S.C. §112, first paragraph, taking the position that the claims should be amended to recite obtaining a tissue sample "from skin/hair follicles." In response, Applicants have amended the claims as suggested by the Examiner.

Thirdly, the Action rejects all of the claims except claims 38-41, again under 35 U.S.C. §112, first paragraph. In the Applicants have placed non-rejected claim 38 into independent form, this rejection is moot.

In light of the foregoing, the Examiner is thus requested to reconsider and withdraw the rejections.

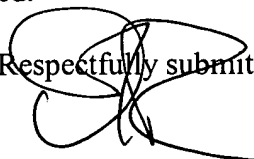
III. Reintroduction of Withdrawn Claims

Applicants now respectfully request the reintroduction and allowance of the withdrawn claims, at which time Applicants intend to change their dependency to depend from claim 38. The Examiner is authorized to do so by an examiner's amendment if she would find this approach expeditious.

IV. Conclusion

Applicants believe that the foregoing remarks fully respond to all outstanding matters for this application. Applicants respectfully request that the rejections of all claims be withdrawn so they may pass to issuance.

Should the Examiner desire to sustain any of the rejections discussed in relation to this Response, the courtesy of a telephonic conference between the Examiner and the undersigned attorney at 512-536-3055 is respectfully requested.

Respectfully submitted,


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